

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD F. HAAS,

Plaintiff,

V.

CARLOS M. GUTIERREZ et al.,

Defendants.

07 Civ. 3623 (GBD)

**MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION TO AMEND THE COMPLAINT**

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Southern District of New York
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– Of Counsel –

Defendants Carlos M. Gutierrez, Secretary of Commerce; James M. Turner, Acting Director of the National Institute of Standards and Technology (“NIST”);¹ and NIST employees Shyam Sunder, Therese McAllister, and Catherine Fletcher (collectively, the “government”) respectfully submit this memorandum of law in opposition to plaintiff’s motion to amend the complaint.

ARGUMENT

The Motion Should Be Denied

Leave to amend a complaint should be denied when amendment is futile because the proposed amended complaint fails to state valid, cognizable claims. “Although leave to amend is usually freely granted, it may be denied within the trial court’s discretion where the proposed amendment would be futile.” *Marchi v. Bd. of Cooperative Educ. Servs.*, 173 F.3d 469, 477–78 (2d Cir. 1999); *accord Jones v. New York State Div. of Military & Naval Affairs*, 166 F.3d 45, 49 (2d Cir. 1999); *John Hancock Mut. Life Ins. Co. v. Amerford Int’l Corp.*, 22 F.3d 458, 462 (2d Cir.1994).

For the reasons set forth in the government’s memorandums in support of its motion to dismiss this action, amendment of the complaint would be futile. The proposed second amended complaint fails to cure the defects in the first amended complaint, and fails to state valid (or, indeed, nonfrivolous) claims. Accordingly, plaintiff’s motion to amend the complaint should be denied.

¹ Pursuant to Fed. R. Civ. P. 25(d), NIST Acting Director James M. Turner is automatically substituted in this action for his predecessor William A. Jeffrey.

Dated: New York, New York
January 3, 2008

Respectfully submitted,

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